

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF GENERAL SERVICES



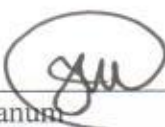
**Hazardous Materials Abatement Services  
DCAM-15-NC-0111**

Addendum No. 4  
Issued: April 2, 2015

This Addendum No. 4 is issued and hereby published on the DGS website on April 2, 2015. Except as modified hereby, the Request for Proposal (RFP) remains unmodified.

**Item No. 1**

**Form of Contract:** Attached to this Addendum is the Form of Contract.  
The Terms of the Form of Contract Shall Prevail Over the RFP. To the Extent There Is An Inconsistency Between The Form Of Contract Issued Herewith And The RFP, The Form Of Contract Shall Govern.

  
\_\_\_\_\_  
JW Lantieri  
Associate Director/Contracting Officer

4/2/15  
Date

- End of Addendum No. 4 -

**FORM OF CONTRACT  
FOR  
HAZARDOUS MATERIALS ABATEMENT SERVICES  
DCAM-15-NC-0111**

**THIS CONTRACT FOR Hazardous Materials Abatement Services** ("Contract") is entered into by and between the District of Columbia government acting by and through its **DEPARTMENT OF GENERAL SERVICES** ("Department") and ("Contractor").

**WITNESSETH**

**WHEREAS**, the Department issued a Request for Proposals to engage one or more Contractors to provide all personnel, materials and equipment necessary to remove, encapsulate or abate hazardous materials located at multiple District facilities.

**WHEREAS**, the Contractor submitted a proposal in response to the Request for Proposals, and the Department wishes to engage the Contractor to provide the requested services.

**WHEREAS**, the Department desires that the Contractor provide the services specified herein for one (1) year from date of award, with four (4) one year option periods.

**NOW, THEREFORE**, in consideration of the foregoing and for good and valuable consideration, the sufficiency and adequacy of which is hereby acknowledged, the parties to this Contract agree as follows:

**CONTRACT**

**SECTION 1**

**SCOPE OF WORK**

The Contractor shall provide Hazardous Materials Abatement Services for various District facilities as described below:

Work issued under the contract will involve sites containing or believed to contain hazardous waste materials such as asbestos, lead, and chemical and any other hazards regulated under the Toxic Substances Control Act or as identified by DGS Environmental Health and Safety, Facilities Division.

**1.1 GENERAL REQUIREMENTS**

1. The Contractor's work shall encompass the abatement of Asbestos Containing Materials (ACM), Lead Based Paint (LBP), and other hazards or chemicals within the areas identified by DGS Environmental Health and Safety Division.
2. The Contractor shall provide all labor, material, equipment, equipment rentals and incidental items required to perform the work, including but not limited to the following:

- a. Work area preparation and site isolation
- b. Lock down encapsulation
- c. Protective clothing and equipment for asbestos abatement
- d. Equipment and engineering controls
- e. Decontamination enclosure system facilitation
- f. Proper Abatement Procedures
- g. On going clean-up of the work area
- h. Final clean-up of work area
- i. Storage and disposal of asbestos containing waste/debris
- j. Compliance and certification

## **1.2 APPLICABLE STANDARDS**

1. All work shall be conducted in accordance with the applicable provision(s) listed below:
  - a. The Contractor shall perform all environmental abatement work in strict accordance with the Safety Standards of the District of Columbia and the U.S. Occupational Safety and Health Act of 1970, Occupational Safety and Health Administration (OSHA) Asbestos Regulations, Title 29, Part 1926, section 58 of the Code of Federal Regulations and the D.C. Occupational Safety and Health Act of 1988, D.C. Official Code § 32-1101 et seq. and 1-620.01 et seq.
  - b. It is the Contractor's responsibility to meet the minimum code standard, comply with the requirements of the District Department of the Environment (DDOE) and Environmental Protection Agency (EPA) Regulations for Asbestos; Title 40, Part 61, Sub-parts A and M or the Code of Federal Regulations; and the applicable provisions of the Environmental Protection Agency Asbestos Hazard Emergency Response Act (AHERA).
  - c. Department of Labor Standard Safety and Health Regulations for Construction, as stated in the Federal Register, VOL 36, number 75, Part II as issued in Washington D.C. and all other federal, state, and local laws, regulations, codes, and standards, as applicable, and as may be revised or added during the term of this contract.
  - d. All abatement procedures shall be performed in compliance with current Federal, State, and City environmental and building codes. The specifications and procedures contained in this contract shall be applicable to asbestos abatement work, including securing all required permits, certificates and licenses. When a conflict in regulations exists, the most stringent shall apply, or as otherwise directed by DGS Health and Safety, Facilities Division personnel.

## **1.3 REGULATION POSTINGS**

1. Current editions of each applicable regulation shall be posted by the Contractor in a most visible place at the job site. Contractor shall assure that the regulations are not altered, defaced, or covered by other materials. One copy of each current regulation shall also be kept at the Contractor's office.



2. The Contractor shall post telephone numbers for local emergency services at the job site.

#### **1.4 THIRD PARTY AIR MONITORING**

1. Third party air monitoring duties will be provided by an Industrial Hygiene firm contracted by DGS Environmental Health and Safety Division
2. Air monitoring shall be conducted as per the Applicable Standards section of this Scope by the Third Party Air Monitor.
3. The Third Party Air Monitor will ensure that the Contractor has notified, the applicable federal, state, and municipal agencies of its intent to perform either an asbestos project or an abatement to be performed under the designation of other than asbestos project.

4. Asbestos Action Level:

- a. The 8-hour Time Weighted Average (TWA), must not exceed 0.01 fibers, longer than 5 micrometers, per cubic centimeter of air (f/cc), as determined by phase contrast microscopy. This level is determined by air monitoring conducted by the Third Party Air Monitor.
- b. The Third Party Air Monitor shall assess whether work should proceed whenever the level outside the work area exceeds 0.01 f/cc. The Third Party Air Monitor and the Contractor shall take steps to locate the source of contamination and the Contractor shall abate it.
- c. The Contractor shall clean up surfaces outside of the work area using HEPA (High Efficiency Particulate Air) vacuums and wet cleaning techniques prior to resuming abatement activities.

- d. Work Area Clearance Level:

Following asbestos abatement activities, the work area clearance level shall not exceed 0.01 fibers per cubic centimeter of air (f/cc) as determined by phase contrast microscopy or an equivalent method approved and conducted by the Third Party Air Monitor.

- e. Abatement contractors employees personal monitoring shall be provided independently of the Third Party Monitoring.

#### **1.5 WASTE DISPOSAL REQUIREMENTS**

1. The contractor shall transport all asbestos containing waste generated during all abatement activities, covered under this contract to a sanitary landfill disposal site approved by the U.S. Environmental Protection Agency.
2. All plastic bags containing asbestos waste shall be removed and placed in the approved landfill. If bags are damaged, they shall be placed in additional bags and sealed or placed

in leak tight drums. These drums shall not be used for any purpose except for transporting asbestos material. Contaminated drums shall be disposed of as asbestos waste.

3. Workers unloading the sealed drums and machinery operators will wear respirators when handling materials at the disposal site.
4. The Contractor will also be required to comply with the U.S. Environmental Protection Agency regulations (29 CFR 1910 and the U.S. Department of Transportation (49 CFR Parts 100-185) for collecting, packing, transporting and disposing of asbestos.

## **1.6 GENERAL CONDITIONS**

1. DGS may elect not to solicit competitive offers for a project, but in its sole discretion, may solicit a single qualified Contractor under the following circumstances:
  - a. DGS need for the services is urgent and providing an opportunity to all contractors would result in unacceptable delays;
  - b. Only one Contractor is capable of providing the service at the level of quality required because the service is unique or highly specialized; only one contractor has the current capacity to fulfill the requirement, or the service is a logical direction to a work order already issued.
2. In any Work Order/Work Request competition, DGS reserves the right to award a Work Order without discussion. DGS reserves the right to reject all proposals or to waive any minor informality or irregularity in proposals received whenever it is determined that such action is in the best interest of DGS.
3. The Contractor shall provide a cost estimate that is consistent with work to be performed, and line item/unit cost estimating shall be the basis for the estimate.
4. The Contractor shall submit a work plan that identifies all tasks the Contractor intends to complete as part of his effort. The Contractor shall indicate what resources are required to complete each task, how long each task is anticipated to complete, and the interrelationships between the various tasks. The contractor shall identify any assumptions it has utilized and delineate potential technical challenges and associated impacts. The Contractor will also include in the proposal alternatives to address those challenges.
5. Prior to commencement of work, the Contractor shall carefully examine the site where work is proposed, as well as its adjacent areas and seek other usual sources of information about the site. The Contractor will be conclusively presumed to have all necessary resources to complete the work and full knowledge of any and all conditions on the site relating to, or affecting in any way, the performance of the work.
6. Performance under the Contract will be initiated through the issuance of a work order or work request through the EXAM database that details the requirements of the work order



by worksite location, including a timeframe for completion. The Contractor shall be required to submit a cost proposal for review and acceptance by the COTR prior to initiating any work activity. The Contractor will be required to enter the status of the work in EXAM to provide a status through completion. DGS may solicit two or more Contractors to submit proposals to provide the services required by the work order. In determining which contractors to solicit, DGS will consider factors such as past performance, quality, timeliness, special expertise, capacity or other factors determined to be relevant to a particular project.

7. Upon completion of a work order or work request, the contractor shall submit to DGS Environmental Health and Safety a Site Closure Report for work performed at each location. The Site Closure Report shall be prepared in accordance with EPA 40 CFR; Part 763 dated October 30, 1987. The Contractor shall submit the Closure Report to the COTR through EXAM within 30 days of completion of the work. Invoice will be processed ONLY after receipt of the Closure Report.
8. The Contractor shall execute work on an as needed basis at any time, day or night. Normal working hours are from 7:00 am to 12:00 midnight, Monday through Friday. The hours shall be adjusted based on conditions and availability of the building. Any work performed outside the normal working hours will be compensated at the Contractor's overtime rate.
9. The Contractor shall respond to on-site emergency requests within 90 minutes by notification or upon request of the Contracting Officer Technical Representative (COTR) or their designee.
10. Consistent with the policies and procedures of the DGS Health and Safety Facilities Division, DGS reserves the right to make changes from time to time, when deemed necessary, in this scope of services. The DGS Environmental Health and Safety Office will determine what work or material, supplies and/or equipment is to be added or omitted by the changes, and the value of any work and or material required to be added or omitted.

## **1.7 KEY PERSONNEL**

### **1.7.1 Training and Certifications**

The Contractor and its asbestos workforce shall be properly trained and certified in any aspect of environmental abatement that they will perform. Training shall include successful completion of courses that are consistent with EPA requirements for performance of abatement services.

### **1.7.2 Project Manager**

The Contractor shall assign a Project Manager to oversee task accomplishment, administer all instructions, and answer all questions from the COTR pertaining to work orders. The Program Manager shall be responsible for the coordination of all work issued under this contract. The Contractor shall not change the Project Manager without COTR approval.

### **1.7.3 Supervision**

The Contractor shall select and exercise control and direction over its employees and/or subcontractors under this contract. The Contractor shall be responsible for all work performed by subcontractors and shall assume the risk of the subcontractor's non-performance. The COTR may direct the Contractor to remove from the contract any employee and/or subcontractor whose continued employment is deemed to be contrary to the best interest of the District.

### **1.7.4 Licensing, Accreditation and Registration**

The Contractor and all of its subcontractors and sub consultants (regardless of tier) shall comply with all applicable District of Columbia, state, and federal licensing, accreditation, and registration requirements and standards necessary for the performance of the contract.

### **1.7.5 Conformance with Laws**

It shall be the responsibility of the Contractor to perform under the contract in conformance with the Department's Procurement Regulations and all statutes, laws, codes, ordinances, regulations, rules, requirements, orders, and policies of governmental bodies.

### **1.7.6 Service Contract Act**

The Service Contract Act is applicable to this Project. As such, the Contractor and its trade subcontractors shall comply with the wage and reporting requirements imposed by that Act wage determinations are attached hereto as \_\_\_\_\_.

### **1.7.7 Time is of the Essence**

Time is of the essence with respect to the contract. The Department shall have priority any other similar contract held by the Contractor throughout the course of the contract. As such, the Contractor must dedicate such personnel and other resources as are necessary to ensure that the required services are completed on-time and in a diligent, skilled and professional manner.

## **Section 2 Contract Type**

This is an indefinite delivery indefinite quantity contract (ID/IQ) with fixed hourly rates.

## **Section 3 Contractor's Compensation**

### **Section 3.1**

The Contractor shall be entitled to receive a minimum of Five Hundred dollars (\$500.00) regardless of whether any work is assigned to the Contractor. In no event, however, shall the Contractor be entitled to receive more than Nine Hundred Seventy-Five Thousand Dollars (\$975,000.00) per year for work performed pursuant to all Work Orders.



## **Section 4 Contract Term**

**Section 4.1 Base Term** The base term of the contract shall be from the date of award to twelve (12) months thereafter.

## **Section 4.2 Option Year**

The Department shall have the unilateral right to extend the term of this Contract for four (4) one (1) year option periods; provided that the Department shall give the Contractor preliminary written notice of its intent to exercise the option to extend the term of the Contract thirty (30) days prior to the expiration of the contract. The preliminary notice does not commit the Department to an extension. Contractor may waive the thirty (30) day notice requirement by providing a written waiver to the Contracting Officer prior to the expiration of the Contract.

## **Section 4.3 Option Year Pricing**

In the event the Department exercises its option to extend the Contract as described in Section 4.2, the fixed price applicable to such Option Year is set forth in **Exhibit A**.

## **Section 5 Changes**

### **Section 5.1 Executed Change Order Required**

Changes to the Contract may be made only by a written Change Order executed by the Department. The Contracting Officer is the only person authorized to approve changes in any of the requirements of this contract. The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this contract, unless issued in writing and signed by the Contracting Officer.

### **Section 5.2**

In the event the Contractor effects any change at the instruction or request of any person other than the Contracting Officer, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any cost increase incurred as a result thereof.

### **Section 5.3**

#### **Prompt Notice**

In the event the Contractor encounters a situation which the Contractor believes to be a change to this Contract, the Contractor shall provide the Department with prompt written notice of such event and the possible impact such event could have on cost and schedule. All such notices shall be given promptly, considering the then applicable situations, but in no event more than ten (10) calendar days after encountering the situation. The Contractor acknowledges that the failure to provide such notice in a timely manner could limit or eliminate the Department's ability to mitigate such events, and thus, the Contractor shall not be entitled to an adjustment in the event it fails to provide prompt notice. The Contractor shall include provisions similar to this provision in all of its subcontracts.



#### **Section 5.4 Executed Change Orders Final.**

The Contractor agrees that any Change Order executed by the Department and the Contractor constitutes its full and final adjustment for all costs, delays, disruptions, inefficiencies, cumulative impact, accelerations, schedule impacts, or other consequences arising from the change in question, whether a Change Event, or from any claimed cumulative effect of changes made to the date of the Change Order, and that no further adjustments in compensation or time shall be sought or made with respect to the Change Event giving rise to the Change Order.

#### **Section 6 Indemnification**

The Contractor shall indemnify and hold harmless the Department, the District of Columbia, and the respective employees, officers and agents of either from and against all liabilities, obligations, damages, losses, fines, penalties, claims, demands, costs, charges, judgments and expenses (including, without limitation, reasonable attorney's fees and disbursements) whatsoever, which may be imposed or incurred or paid by, or asserted against the Indemnities or the Project, to the extent caused by the failure of the Contractor to perform the work in accordance with the standard of care set forth in Section 1.2 hereto; provided, however, that it is understood and agreed that the grant of indemnification made hereby shall not extend to designers or builders engaged by the Department with regard to claims or costs asserted by such designers or builders arising from the failure of the Contractor to timely process submittals but it is understood and agreed that the preceding limitation on the grant of indemnification shall not bar claims asserted by the Department in its own name; and, provided further, that the Department agrees and understands that design reviews conducted by the Contractor are solely for the purpose of assessing whether the proposed designs comply with the Department's functional and aesthetic requirements and that in no event shall the Contractor be liable to the Department if the systems reflected in such designs fail to perform as intended.

#### **Section 7 Disputes**

##### **Section 7.1 Informal Resolution**

It is the mutual desire of the parties to resolve any disputes arising under, or otherwise related to, this Contract in an informal manner and by consensus. Toward this end, should any such dispute arise, the parties shall use their best efforts to resolve the dispute without the need for formal litigation or process of any kind. In the event that any such dispute cannot be resolved by the parties' field representatives, the parties shall arrange for representatives of their senior management to meet and, if possible, discuss the issue. If this process cannot resolve the problem, then either party may initiate arbitration in accordance with Section 7.2 of this Contract. If resolution is not reached in such manner, the Contractor shall make a claim in accordance with this Section.

##### **Section 7.2 Formal Dispute Resolution Procedure**

###### **Section 7.2.1 Notice of Claim**

If the Contractor wishes to assert a claim over a contract dispute, the Contractor shall provide written notice of the claim to the Department pursuant to procedures set forth in section 4732 of

the Department's procurement rules and section 1004 of the District's Procurement Practices Reform Act of 2010 (PPRA).

### **Section 7.2.2 Contents of Notice of Claim**

The notice of claim shall state the nature of the claim, the events or circumstances giving rise to the claim, the type of relief requested, and the amount of time or additional compensation, or other damages sought. If the amount of time, compensation, or other damages sought is not reasonably ascertainable at the time such notice is provided, the Contractor shall so state, explain why, and provide whatever estimates it can reasonably provide. The notice shall state clearly that the Architect intends to assert a claim against the Department.

### **Section 7.2.3 Appeal Procedures**

All claims arising under or in connection with the Contract or its breach, or relating to the Project, whether framed in contract, tort or otherwise, and which are not resolved via the claims process may be resolved by filing an appeal with the District of Columbia Board of Contract Appeals in accordance with Title X of the *Procurement Practices Reform Act of 2010* (PPRA). However, if a third party brings any claim against the Department, including, without limitation, claims of infringement of patents, copyrights or other intellectual property rights, the Department may bring an action for defense or indemnification against the Contractor in the court in which such claim is being litigated.

## **Section 8 Termination**

### **Section 8.1 Termination for Default**

The Department may, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:

- (1) If the Contractor fails to perform the services within the time specified herein or any extension thereof; or
- (2) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with the terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as the Contracting Officer may authorized in writing) after receipt of notice from the Contracting Officer specifying such failure.

### **Section 8.2 Termination for Convenience**

The Department may, upon fourteen (14) days written notice to the Contractor, terminate this Contract in whole or specified part, for its convenience, whether the Contractor is in breach of this Contract or not. In the event the Department exercises its right to terminate this Contract for convenience, the Contractor shall not be entitled to recover for lost profits on the unperformed aspect of the work. The notice of termination shall state the effective date of termination, the extent of the termination, and any specific instructions. In such event, the Contractor shall promptly submit all documents and computer files it has prepared relating to this engagement.



The Contractor shall submit a proposal for settlement of all amounts due as a result of the termination for convenience.

## **Section 9.0 Contracting Officer (CO)**

Contracts will be entered into and signed on behalf of the District only by contracting officers. The contact information for the Contracting Officer is:

Jonathan Kayne  
Interim Director/Chief Contracting Officer  
Department of General Services  
2000 14th Street, NW, 8th Floor  
Washington, DC 20009

## **Section 9.1 Contracting Officer's Technical Representative (COTR)**

The COTR is responsible for general administration of the contract and advising the Contracting Officer as to the Contractor's compliance or noncompliance with the contract. The COTR has the responsibility of ensuring that the work conforms to the requirements of this contract and such other responsibilities and authorities as may be specified in the contract. These include:

- (a) Keeping the CO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential problem areas under the contract;
- (b) Coordinating site entry for Contractor personnel, if applicable;
- (c) Reviewing invoices for completed work and recommending approval by the CO if the Contractor's prices and costs are consistent with the contractual amounts and progress is satisfactory and commensurate with the rate of expenditure;
- (d) Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions; and
- (e) Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, and equipment) and invoice or vouchers.
- (f) The contact information of the COTR is:

Ricardo Eley  
Safety and Health Manager  
2000 14th Street, NW  
Washington, DC 20009  
ricardo.eley@dc.gov

## **Section 9.2 First Source Contract**

### **Section 9.2.1**

The Contractor and all its member firms, if any, and each of its Subcontractors shall submit to the Department a list of current employees that will be assigned to the Contract, the date they were hired and whether or not they live in the District of Columbia.

### **Section 9.2.2**

The Contractor and its constituent entities shall comply with subchapter III of Chapter 11 Title 1, and subchapter II of Chapter 11 of Title 1 of the D.C. Code, and all successor acts thereto and the rules and regulations promulgated thereunder. The Contractor and all member firms and Subcontractors shall execute a First Source Contract with the District of Columbia Department of Employment Services ("DOES") prior to beginning Work at the Project site.

### **Section 9.2.3**

The Contractor shall maintain detailed records relating to the general hiring of District of Columbia and community residents. At least fifty-one percent (51%) of the Contractor's Team and every subcontractor's employees hired after the Contractor enters into this contract with the Department, or after such subcontractor enters into a contract with the Contractor, to work on this project, shall be residents of the District of Columbia.

### **Section 9.2.4**

The Contractor shall be responsible for: (i) including the provisions of this Section 9.2 in all subcontracts; (ii) collecting the information required in this Section 9.2 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in any reports required to be submitted by the Contractor pursuant to this Section 9.2.

## **Section 10 Payments**

### **Section 10.1 Invoicing**

The Contractor shall invoice the Department on a monthly basis. Each such invoice shall itemize all of the work performed during the invoice period. Invoices for the COTR shall be submitted electronically to [dgsfm.inves@dc.gov](mailto:dgsfm.inves@dc.gov). Properly prepared invoices with the necessary backup shall be paid within thirty (30) days of receipt. Invoices not paid by that date shall bear interest in accordance with the Prompt Payment Act.

### **Section 10.2 Right to Withhold Payments**

The Department will notify the Contractor within fifteen (15) calendar days after receiving any invoice for payment, of any defect in the invoice or the work which may result in the Department's declining to pay all or a part of the invoiced amount. The Department may withhold payment from the Contractor, in whole or part, as appropriate, if:

- (a) The work is defective and such defects have not been remedied; or



(b) The Department has determined that the Contractor's progress has fallen behind the Project Schedule, and the Contractor fails, within ten calendar days of the Department's written demand, to provide the Department with a realistic and acceptable plan to recover the delays; or

(c) The Contractor has failed to pay subcontractors promptly or has made false or inaccurate certifications that payments to Subcontractors or Suppliers are due or have been made; or

(d) The Contractor is otherwise in substantial breach of the Contract.

### **Section 10.3**

The Department's liability under this contract is contingent upon the future availability of appropriated monies with which to make payment under the contract. The legal liability on the part of the Department for the payment of any money shall not arise unless and until such appropriations have been provided.

## **Section 11 Subcontracts**

The Contractor shall perform the work with its own forces. In the event that the Contractor desires to engage one or more subcontractors to assist with the work, it shall advise the Department and obtain the Department's written approval of any such subcontractor. All subcontractors shall be required to comply with the insurance requirements set forth herein. In addition, the Contractor shall be responsible for all work performed by the subcontractors and shall assume the risk of the subcontractors' non-performance.

### **Section 11.1 Subcontracted Work**

For all work, the Contractor's compensation will be based on the rates established in Attachment \_\_\_\_\_ and thus, such rates must be sufficient to cover the cost of subcontracting in the event the Contractor plans to satisfy its contractual obligations through subcontracting.

## **Section 12 Insurance**

### **Section 12.1 Required Insurance**

At all times while working under this Contract, the Contractor shall maintain the following insurance: (i) a comprehensive general liability policy having a policy limit of at least One Million Dollars (\$1,000,000) and including completed operations coverage; and (ii) workers compensation coverage at the statutory limit. The comprehensive general liability policy shall include completed operations coverage and such coverage shall be maintained for a period of at least two (2) years after the work is completed. The comprehensive general liability policy shall be endorsed to add the District of Columbia, including, but not limited to, its Department of General Services, and the respective agents, employees and offices of each as additional insured's.

## **Section 12.2 Waiver of Subrogation**

All such insurance shall contain a waiver of subrogation against the Department and its respective agents.

## **Section 12.3 Strength of Insurer**

All insurance shall be placed with insurers that are reasonably acceptable to the Department and with an A.M. Best's rating of not less than a then-current rating of "A-" or better and a financial size category of Class XV or higher. All such insurers shall be licensed/approved to do business in the District of Columbia.

## **Section 13 Miscellaneous Provisions**

### **Section 13.1 Governing Law**

This contract, and any disputes arising out of or related to this contract, shall be governed by, and construed in accordance with, the laws of the District of Columbia.

### **Section 13.2 Standard Contract Provisions**

The Standard Contract Provisions for use with District of Columbia Government Supplies and Services Contracts dated March, 2007 ("SCP") are incorporated by reference as part of this contract.

### **Section 13.3 Service Contract Act Provision**

The Contractor agrees that the work performed under this Contract shall be subject to the Service Contract Act and the Living Wage Act. The wage rates applicable to this Contract are attached as Exhibit C.

### **Section 13.4 Living Wage Act**

The Contractor agrees that the work performed under this Contract shall be subject to the District of Columbia Living Wage Act.

### **Section 13.5 False Claims Act**

The Contractor shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to the government, including the prescriptions set forth in D.C. Code § 2-308.14.

### **Section 13.6 Americans With Disabilities Act Of 1990 (ADA)**

During the performance of this contract, the Contractor and any of its subcontractors shall comply with the ADA. The ADA makes it unlawful to discriminate in employment against a qualified individual with a disability. See 42 U.S.C. §12101 et seq.



### **Section 13.7 Buy American Act Provision**

The Contractor shall comply with the provisions of the Buy American Act (41 U.S.C. § 10a), including, but not limited to, the purchase of steel.

### **Section 13.8 Anti-Deficiency Act**

The Department's obligations and responsibilities under the terms of the Contract are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1350, 1351, (ii) the D.C. Code 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Code §§ 47-355.01 - 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act. The Contract shall not constitute an indebtedness of the Department, nor shall it constitute an obligation for which the Department is obligated to levy or pledge any form of taxation, or for which the Department has levied or pledged any form of taxation. **IN ACCORDANCE WITH § 446 OF THE HOME RULE ACT, D.C. CODE § 1-204.46, NO DISTRICT OF COLUMBIA OFFICIAL IS AUTHORIZED TO OBLIGATE OR EXPEND ANY AMOUNT UNDER THE CONTRACT UNLESS SUCH AMOUNT HAS BEEN APPROVED, IS LAWFULLY AVAILABLE AND APPROPRIATED BY ACT OF CONGRESS.**

### **Section 13.9 Freedom Of Information Act**

The District of Columbia Freedom of Information Act, at D.C. Official Code § 2-532 (a-3), requires the District to make available for inspection and copying any record produced or collected pursuant to a District contract with a private contractor to perform a public function, to the same extent as if the record were maintained by the agency on whose behalf the contract is made. If the Contractor receives a request for such information, the Contractor shall immediately send the request to the COTR designated in subsection 6.7. who will provide the request to the FOIA Officer for the agency with programmatic responsibility in accordance with the D.C. Freedom of Information Act. If the agency with programmatic responsibility receives a request for a record maintained by the Contractor pursuant to the contract, the COTR will forward a copy to the Contractor. In either event, the Contractor is required by law to provide all responsive records to the COTR within the timeframe designated by the COTR. The FOIA Officer for the agency with programmatic responsibility will determine the releasability of the records. The District will reimburse the Contractor for the costs of searching and copying the records in accordance with D.C. Official Code §2-532 and Chapter 4 of Title 1 of the D.C. Municipal Regulations.

### **Section 13.10 Retention of Records: Inspections and Audits**

(a) The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance under the Contract in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Contract.

(b) The Contractor shall also maintain the financial information and data used in the preparation and support of the costing and cost summary submitted to the Department and the required cost submissions in effect on the date of execution of the Department.

(c) The Department, the District of Columbia government, the Comptroller General of the United States, the U.S. Department of Labor and any of their authorized representatives shall have access to the books, records, documents and other evidence held, owned or maintained by the Contractor for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the Contractor. The Contractor shall provide proper facilities for such access and inspection.

(d) The Contractor agrees to include the wording of this Section in all its subcontracts in excess of Five Thousand Dollars (\$5,000.00) that directly relate to Project performance.

Audits conducted pursuant to this Section will be in accordance with generally accepted auditing standards with the results prepared in accordance with generally accepted accounting principles and established procedures and guidelines of the applicable reviewing or audit agency.

The Contractor agrees to the disclosure of all information and reports, resulting from access to records, to any authorized representative of the Department. Where the audit concerns the Contractor, the auditing agency will afford the Contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

The Contractor shall preserve all records described herein from the effective date of the Contract through completion and for a period of seven (7) years after a final settlement. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until seven (7) years after the date of resolution of such dispute, appeal, litigation, claim or exception.

### **Section 13.11 Gratuities and Officers Not to Benefit Provisions.**

#### **Section 13.11.1**

If it is found, after notice and hearing, by the Department that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any official, employee or agent of the Department or the District with a view toward securing the Contract or any other contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of the Contract, the Department may, by written notice to the Contractor, terminate the right of the Contractor to proceed under the Contract and may pursue such other rights and remedies provided by law and under the Contract.

#### **Section 13.11.2**

In the event the Contract is terminated as provided in Section 13.11.1, the Department shall be entitled:

- (a) To pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor; and



- (b) As a penalty in addition to any other damages to which it may be entitled by to exemplary damages in an amount (as determined by the Department which shall less than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.
- (c) No member of, nor delegate to Congress, Mayor or City Council Member, nor officer nor employee of the District, nor officer nor employee of the Department shall be admitted to any share or part of the Contract or to any benefit that may arise therefrom, and all Contracts entered into by the Contracting Officer of the Department in which he or any officer or employee of the Department shall be personally interested as well as all Contracts made by the Department in which the Mayor or City Council Member or officer or employee of the District shall be personally interested shall be void and no payments shall be made on any such contracts by the Department or by any officer thereof; but this provision shall not be construed or extend to the Contract if the share of or benefit to the member of, or delegate to Congress, Mayor or City Council Member, or officer or employee of the District is de minimis.

### **Section 13.12 Ethical Standards For Office's Employees And Former Employees**

The Department expects the Contractor to observe the highest ethical standards and to comply with all applicable law, rules, and regulations governing ethical conduct or conflicts of interest. Neither the Contractor, nor any person associated with the Contractor, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of the District or the Department not in conformity with applicable law, rules or regulations. The Contractor shall not engage the services of any person or persons in the employment of the Department or the District for any Work required, contemplated or performed under the Contract. The Contractor may not assign to any former Department or District employee or agent who has joined the Contractor's firm any matter on which the former employee, while in the employ of the Department, had material or substantial involvement in the matter. The Contractor may request a waiver to permit the assignment of such matters to former Department personnel on a case-by-case basis. The Contractor shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each Subcontractor or vendor.

### **Section 13.13 Publicity**

The Contractor shall at all times obtain the prior written approval from the Contracting Officer before the Contractor, any of its officers, agents, employees or subcontractors, either during or after expiration or termination of the contract, make any statement, or issue any material, for publication through any medium of communication, bearing on the work performed or data collected under this contract.

### **Section 13.14 Severability**

In the event any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Contract, and in

lieu of each such invalid, illegal or unenforceable provision, there shall be added automatically as a part of this Contract a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and be valid, legal and enforceable; each part of this Contract is intended to be severable.

### **Section 13.15**

The Contractor and the Contractor's employees shall perform the services specified herein as independent contractors, not as employees of the government and shall be responsible for their own management and administration of the work required and bear sole responsibility for complying with any and all technical, schedule, financial requirements or constraints related to the performance of this contract.

### **Section 14 Order of Precedence**

A conflict in language shall be resolved by giving precedence to the document in the highest order of priority that contains language addressing the issue in question. The following documents are incorporated into the contract by reference and made a part of the contract in the following order of precedence:

- a. This Contract document
- b. Contract Exhibits other than the Standard Contract Provisions
- c. Company's Proposal \_\_\_\_\_
- d. The RFP dated March 18, 2015, as amended
- e. Standard Contract Provisions for use with District of Columbia Government Supplies and Services Contracts dated March 7, 2007

**IN WITNESS WHEREOF**, each of the parties to this Contract has caused this Contract to be signed by its duly authorized representative.

### **DEPARTMENT OF GENERAL SERVICES**

**By:** \_\_\_\_\_  
**Name:** Jonathan Kayne  
**Title:** Interim Director  
**Date:** \_\_\_\_\_

### **Contractor:**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_